

**PROPERTY AND RIGHT-OF-WAY COMMITTEE MEETING  
CITY HALL, 8<sup>TH</sup> FLOOR  
COMMISSION CONFERENCE ROOM  
THURSDAY, JULY 17, 2008 – 10:00 AM**

**BOARD MEMBERS PRESENT**

Peter Partington, City Engineer  
Tom Terrell, Public Works Facilities Manager  
Mark Darmanin, Utilities Distr. & Collections Manager  
Tony Irvine, Surveyor  
Anthony Fajardo, Planner III  
Carol Ingold, Parks & Recreation Supervisor  
Michael Maloney, Code Enforcement Manager

**STAFF**

Victor Volpi, Senior Real Estate Officer  
Diana Alarcon, Assistant Parking Services Manager  
Hilda Testa, Recording Clerk, Prototype, Inc.

**CALL TO ORDER**

Mr. Partington called the meeting to order at 10:06 a.m., and stated this was a Committee with the responsibility of advising the City Manager and City Commission on matters connected with City property and public rights-of-way.

Following roll call, it was determined that a quorum was present.

**ITEM ONE:**                      **APPROVAL OF JUNE 19, 2008 MINUTES**

**Motion** made by Mr. Darmanin, seconded by Ms. Ingold, to approve the minutes of the May 15, 2008 meeting. In a voice vote, the motion passed unanimously.

**ITEM TWO:**                      **VACATION OF EASEMENT**

ADDRESS OR GENERAL LOCATION: 1900 NW 21 Avenue

Mr. Volpi introduced this item stating Jerald McLaughlin with Pearson Properties I, LLC would like a positive recommendation to vacate a platted 12-foot and 6-foot utility easement, as shown on the construction asbuilt survey (Exhibit A). The applicant believes there are no utilities in the easements and there is an existing building encroachment.

Mr. Jerry McLaughlin, McLaughlin Engineering Company, provided a description of the area, and handed out copies of plats and surveys. Mr. Darmanin requested information on the fire services for the property. Mr. McLaughlin verified the fire services fell within

the easement, and the vacation request only covered the portion under the building. Mr. Darmanin stated typically a revocable license would be granted laying out the owner liability for equipment in the easement. Mr. McLaughlin noted the plan had been approved, no fire service equipment had been moved, and only the easement was in question.

Mr. Darmanin questioned the City's liability in the event something happened to the building while being located in the easement. Mr. McLaughlin reiterated there was nothing in that portion of the easement under the building. Mr. Irvine stated the City would not have liability except in the case of the City being negligent. Mr. Volpi stated a revocable license would be reserved for something already existing, and by granting a vacation the fire service would remain in the easement.

Mr. Darmanin asked about an existing revocable license, which would indemnify the City from any damage to the building. Mr. Volpi stated there was no current license agreement, and none was needed since everything sat in the easement.

Mr. Terrell noted the issue brought up a secondary problem, in that a new building was built in the easement, and had the request come before to vacate any portion of the easement, the Committee may have asked that the fire service be moved into the easement.

Mr. Volpi asked how the situation would normally have been handled when all the pipes go into the building. Mr. Darmanin explained there would be a delineation of responsibility where a back flow prevention device would be placed. Mr. Darmanin stated the easement had been dedicated to bring the fire service up to the building, which means a request had been originally made, the building somehow was granted to be built in the easement. Mr. Darmanin expressed concern over the liability should the fire service equipment or the area under the building be damaged.

Mr. McLaughlin noted there had been no changes from the approved plan in the distance between the service and the building. Only the location of building with the service had shifted. Mr. Volpi stated the applicant needed to provide a survey showing the back flow prevention valve was in the easement. Mr. Darmanin concurred, and added the location of the pipe running away from the building needed to be determined.

There followed a discussion by Mr. McLaughlin and the Committee concerning location of the requested easement utilizing the provided surveys. Mr. Irvine pointed out the entire fire service, including the hydrant, would all lie within the platted ingress/egress and utility easements.

Mr. McLaughlin verified the proposal only included the corner piece under the building and six foot to the east, and not the entire twelve foot easement. Mr. Partington asked

why the entire easement would not be vacated. Mr. McLaughlin explained there were utilities and roof drainage into a portion of that twelve foot easement. Mr. Terrell explained the hydrants were already being maintained by the City. Mr. Darmanin stated the hydrants were privately maintained.

Mr. Partington requested information regarding utilities within the areas being discussed which would require an easement. Mr. McLaughlin stated the main line servicing the property, including water, sewer, and drainage ran through that area. Mr. Partington noted those utilities were not the responsibility of the City, and the only reason the City would require an easement would be to maintain City utilities.

Mr. Dan Taylor, attorney representing the owner, explained the maintenance of the services from the street to the building was the responsibility of the owner. Mr. Taylor stated the owner's concern would be any potential encroachment that could arise at the time of a future sale. Mr. Partington agreed it made sense to get rid of the proposed areas, and suggested removing even more of the easement.

Mr. Irvine stated this was another example of a problem that would have been forestalled if an ALTA survey had been required by Building Services as part of the original land development showing all easements of record. Mr. Irvine noted the Committee had constantly pressed for the additional requirement, and had been repeatedly told the requirement caused an "undue hardship".

Mr. McLaughlin asked if vacating the whole easement would give the Fire Department the right to go on to private property to connect to the services if there was no easement. Mr. Irvine stated the back flow prevention would be in the ingress/egress easement, and only the twelve foot outside would be vacated.

Mr. Partington felt there was no problem with vacating the proposed area, but felt there should be a discussion regarding vacating more than the proposed area. Mr. Irvine noted an anchor for a pole which fell in the easement. Mr. Irvine stated if there was no need for the City to access public utilities the area should be cleaned up, and questioned why the easement had been placed in the first place.

Mr. Partington expressed concern the City would, sometime in the future, be held responsible for the easement, even though nothing was located in the twelve foot easement of interest to the City. Mr. Irvine noted on Parcel C an easement had been requested, but on Parcel B no easement had been requested. Mr. Irvine felt during the platting process Broward County or the City felt a twelve foot easement was necessary.

**Motion** made by Mr. Irvine, seconded by Mr. Terrell, to recommend approval of the vacation as submitted, with no recommendation concerning the remainder of the twelve foot utility easement.

Mr. Darmanin requested an amendment to the motion, allowing an opportunity to look at the “civil as-builts” to locate the valve for the fire service, as the GPS on the valve appears to be different from the surveys provided.

In a voice vote, the motion passed unanimously.

**ITEM THREE:**                    **VACATION OF EASEMENT**

ADDRESS OR GENERAL LOCATION: 100 E Las Olas Boulevard

Mr. Volpi introduced this item stating SVP Las Olas Limited Partnership would like a positive recommendation to vacate a 118-foot x 62-foot Broward County Traffic Control easement, as show on Exhibit B (New River Center 151-15B). This easement is non-exclusive. Broward County Traffic Engineering Division is agreeable to this request. Mr. Volpi introduced Joe Handley from Craven Thompson and Associates and Matthew Vanderwerff from Simmons Vedder.

Mr. Handley provided a description of the vacant property just north of the River House, bordering Las Olas, Southeast First, and Las Olas Way. Mr. Handley used a display to provide a brief description of the project. Mr. Handley explained the application requested a vacation of a portion of the easement which was in conflict with the proposed building. Mr. Handley stated Broward County, Engineering, and Traffic Engineering had given approval for the vacation as long as signalization plans were provided showing signals in the remaining easement.

Mr. Handley pointed out a change from the provided materials, which showed only the traffic control easement on Parcel A. Broward County had recently requested the traffic control easement portion over the existing FP&L easement within Parcel A be added. Referring to provided plat documents, Mr. Handley noted Parcel E was not a dedicated right-of-way, but a roadway easement.

Mr. Irvine asked for written comments from the County. Mr. Handley offered to provide minutes from the meeting where the County’s concerns had been addressed. Mr. Handley reminded the Committee the process with the County Commission had not yet been completed. The County approval was necessary due to the platted utility easement being recorded with the County. An approved certified resolution was needed from the City to begin the County process.

Mr. Irvine expressed concern with taking a developer’s word for Broward County sentiment without seeing something in writing. Mr. Irvine stated Broward County needed to go “on the record” expressing their approval. Mr. Handley stated the County

would not provide anything on the record without the signalization plan. Mr. Handley stated the minutes were available from the meetings with the County.

In response to questions from Mr. Partington, Mr. Handley used diagrams to show the areas in question. Heidi Davis, an attorney with Gunster, Yoakley, stated there was a private roadway with an easement dedicated for ingress/egress to the public, and confirmed utilities would need permission from the owner for access to the driveway. Mr. Handley explained the driveway area was dedicated by plat for traffic signal control equipment, and the size of the area (118 x 40 feet) was excessive for any future signalization needs. Ms. Day pointed out the Sun Sentinel building was stepped back, and was designed in case signalization equipment was needed.

Mr. Handley stated the signalization plan was in the process of being developed, but noted the process could take up to eighteen months to complete. Mr. Partington stated the Committee would need to see the plans, and a letter from Broward County indicating their agreement with the requested modification. Mr. Handley agreed to request a letter from the County, and requested the Committee provide a conditional approval of the application.

There followed a discussion regarding the location of the FP&L, ingress/egress, and sidewalk easements.

**Motion** made by Mr. Irvine, seconded by Mr. Terrell, to recommend approval of the vacation of the portion of the easement as submitted, provided applicant submits a letter from Broward County stating their concurrence with the general principal of vacation, and that whatever happens in the vicinity be reviewed by the City Engineer for ADA compliance of the sidewalks.

Mr. Handley reminded the Committee the application should not be approved as submitted since the County would only allow vacation of the portion south of the FP&L easement. Mr. Irvine stated the submittal could be revised before being presented.

In a voice vote, the motion passed unanimously.

**ITEM FOUR:**                    **VACATION OF EASEMENT / RELOCATION OF OUTFALL /**  
   **NEW EASEMENT**

ADDRESS OR GENERAL LOCATION: 1224 Seminole Drive

Mr. Volpi introduced the item by stating at the June 19<sup>th</sup> Property and Right-of-Way meeting the applicant presented a plan to construct a wall on a drainage easement, which was not recommended. The applicant, Tim Ingham, would now like a positive

recommendation to allow him to construct a new outfall on a new 8-foot 4-inch drainage easement (entirely on his property), and vacate the existing easement.

Mr. Alberto Comas, Architectural Design Studio, Inc., noted the proposal for easement had been revised following the June meeting to hopefully provide a compromise amenable to the City.

Mr. Volpi noted the wooden portion on top of the block wall would be the only portion crossing the easement, which would require a license agreement. Mr. Comas noted the dock at the other end would also be constructed to avoid the easement area.

Mr. Volpi noted under the new proposal the wall would fall on the property line and would not require any licensing. Mr. Terrell noted only the eight inches falling over the easement and the dock would require licensing. Mr. Darmanin asked if the owner would be amenable to a gate. Mr. Comas stated two gates would be provided for access.

Mr. Darmanin stated the length of the new construction would be from the catch basin in the Seminole Drive right-of-way to the canal, approximately 150 feet, including new catch basin, new pipe, new outfall. Mr. Partington noted this would require a new engineering and building permits. Mr. Comas noted the City required a separate permit for the wall, aside from the building permit. A package of plans would be entirely dedicated to the walls on the property, including an amendment to the renewal permit.

Mr. Darmanin commended the applicant for the excellent work in providing a good alternative. Mr. Patrick Kelley, attorney for the applicant, noted there would be a non-exclusive easement to allow for power lines or other utilities.

Mr. Darmanin summarized the project by stating the request was to vacate the partial (twenty inches) existing easement for the wall. Mr. Irvine stated the easement should be kept with the joint property owner to allow for equipment being brought in on both sides of the wall. Mr. Comas agreed, but stated in reality equipment would not fit due to the landscaping and the hedge.

**Motion** made by Mr. Darmanin, seconded by Ms. Ingold, to approve vacation of the existing easement, an eight foot four inch easement to be rededicated from street to canal. The applicant would either request a revocable license for the dock and the gate, if needed, or the dock would not be placed. There would be controlled planting through the easement.

Mr. Darmanin requested the pipe be centered in the easement, to which Mr. Comas agreed.

**Motion** amended by Mr. Darmanin, seconded by Ms. Ingold, to approve vacation of the existing easement, an eight foot four inch easement to be rededicated from street to canal. The applicant would either request a revocable license for the dock and the gate, if needed, or the dock would not be placed. There would be controlled planting through the easement. The pipe would be centered in the easement.

Mr. Irvine requested more discussion on the easement and the pipe, to make sure the property owner would be responsible for proper abandonment of the pipe. Mr. Kelly stated the pipe was not on the owner's property, and the property owner would have no right to abandon the pipe. Mr. Darmanin stated the engineering permit would give the property owner the right to use whatever method necessary to abandon the pipe.

**Motion** amended by Mr. Darmanin, seconded by Ms. Ingold, to approve vacation of the existing easement, an eight foot four inch easement to be rededicated from street to canal. The applicant would either request a revocable license for the dock and the gate, if needed, or the dock would not be placed. There would be controlled planting through the easement. The pipe would be centered in the easement, and the proper moth balling of the existing infrastructure would be done.

In a voice vote, the amended motion passed unanimously.

#### **ITEM FIVE: STAGING PERMIT**

ADDRESS OR GENERAL LOCATION: 4401 NW 15 Avenue

Ms. Howell, WaterWorks 2011 explained the request was for a staging permit, with the contractor being Man Con. Ms. Howell stated the entrance would be as close to the property line as possible. Mr. Darmanin stated if the meter was in the traffic pattern, a traffic bearing box would be necessary.

Mr. Partington noted a single family home immediately north and west of the project, and asked if the owner was aware of the proposed staging. Mr. Irvine stated the property was a convenience store with frontage to Prospect Road. Mr. Partington asked about the single family home to the north. Ms. Howell stated the owner was aware of the project, and a privacy screen was already in place.

Mr. Irvine noted the property to the north would be impacted and possibly have problems with debris. Ms. Howell stated the waste and debris would be kept closer to Prospect, and the manholes and pipes would be along the northern area. Ms. Howell stated another fence would be added along with the privacy screen.

Mr. Partington asked that the applicant work with the property owner to the north on the fencing requirement. Ms. Howell stated the contractor would not interfere with what the

property owner already has on the property line. Ms. Howell asked if the ordinance required a certain type of fencing. Mr. Irvine suggested the northern fence be moved in seven to ten feet away from the property line to allow for a buffer to the adjoining property owner. Ms. Howell stated Prospect Road and the convenience store would be a traffic problem in moving the property line.

Mr. Irvine stated there should be some separation between the work fence and the private property line for liability and privacy for the home owner. Ms. Howell allowed a three foot separation would be possible. Ms. Howell agreed to provide a copy of the Home Owner's Association letter to the property owner.

Mr. Volpi noted the Committee, in the past, has asked the construction materials not be stacked higher than the fence. Ms. Howell stated the issue was covered as one of the conditions of the site plan.

**Motion** made by Mr. Darmanin, seconded by Ms. Ingold, to accept the staging area as presented, with a three foot buffer along the north property line, and a traffic bearing lid for the water meter in the swale area.

Ms. Ingold asked if the three foot walkway adjoining the convenience store would provide a hiding area of some sort. Mr. Irvine stated the west fence would be tied into the north fence. Mr. Irvine suggested the area be monitored rigidly for dust control due to the proximity of the private residence.

In a voice vote, the motion was approved unanimously.

**ITEM SIX: PARTIAL VACATION OF ALLEY**

ADDRESS OR GENERAL LOCATION: 3245 South Andrews Avenue

Mr. Volpi explained the item by stating Neil Schiller would like a positive recommendation to vacate the southern portion of the alley between SW 33 Street and SW 32 Court, and Andrews Avenue and the FEC Railroad. This item was before the Committee on March 20, 2008 as a total vacation, which was not recommended. The applicant has been to the DRC and has an alternative plan that includes a "T-turnaround" dedication for the remaining alley, should this request be recommended and approved.

Mr. Neil Schiller, attorney with Becker & Poliakoff, was present to answer questions relating to the issue. Mr. Irvine expressed concern with a semi-truck being able to turn around in a fifteen foot turnaround. Mr. Schiller explained the turnaround had been placed at the recommendation of Staff. Mr. Schiller noted there had been a gate closing off the alleyway for the last thirty years, meaning there would be no expectation of a



semi-truck using the alleyway. Mr. Schiller stated the north side of the alleyway had already been vacated, leaving only one access point to the sixteen foot alleyway on 32<sup>nd</sup> Court.

Mr. Partington stated a four foot addition to the alley width would not be adequate for a turnaround. Mr. Partington also allowed a sixteen foot alleyway would be difficult to bring up to standard for a turnaround.

Mr. Darmanin reminded the Committee there had been people speaking for and against the vacation at the last meeting, and asked if the invitation had been given for those people to speak again. Mr. Volpi stated there had not.

Mr. Schiller stated the original issue was a code enforcement issue. Since the last meeting, the applicant and the property owner to the north of objectors have both engaged in discussions about buying the objector's property. Mr. Schiller explained the objectors were interested in selling, and were looking for comparable property elsewhere in the city prior to accepting any offer. Mr. Maloney asked about the fines and liens related to the code enforcement issues. Mr. Schiller stated the property owner has paid those fines.

Mr. Partington stated the four feet, as proposed, would not be sufficient, and thought fifteen feet at right angles to the alley was more appropriate. Mr. Partington stated even a fifteen by twenty box into the owner's property would be sub-standard.

Mr. Irvine expressed concern over the objectors not being notified of this meeting.

**Motion** made by Mr. Irvine to table the issue, which died for lack of a second.

Mr. Partington suggested tabling the issue would not allow for any further discussion on the issue. Mr. Irvine agreed to place the motion in abeyance, but expressed the intention to move to table.

Mr. Volpi was confident the objectors wanted to keep the alleyway open. Mr. Schiller stated this meeting was not public notice, and the Planning and Zoning and City Commission meetings would be public hearings to which the objectors would receive notice. Mr. Schiller stated he was certain the objectors would be bought out at some point, and would have two other opportunities to object down the road. Mr. Schiller noted a meeting with Commissioner Hutchinson and Mr. Partington regarding the issue, and felt the fifteen foot dedication to the City was going to be adequate. Mr. Schiller stated the property owner would do whatever needed to be done for approval, dealt with the code issues, and had worked diligently for three months to come up with a solution. Mr. Irvine expressed his intention to deny the application as presented, citing the very compelling cases presented to the other owner's rights to an alleyway. Mr. Schiller

stated the Committee had the right to consider the objections, but the objectors would receive public notice to petition the Planning and Zoning Board and the City Commission.

Mr. Partington stated the Committee knew enough about the circumstances to continue the discussion. Mr. Partington suggested the objections expressed were the alley being closed would deny property owners the continuous route, affecting the accessibility to the back of the property. Mr. Partington stated other alleys had been closed and vacated mid-way with turnaround areas, and the current issue was the merit of the proposal to close the alley and create a turnaround area. Mr. Partington agreed adding four feet to the width would not be sufficient, but felt the access should be reasonable to the average vehicle.

Mr. Irvine stated the access to the back of the property would be right in the middle of the turnaround area, and the turnaround traffic would affect the owner's ability to use their entrance. Mr. Partington felt confident the proposed turnaround would not affect the owners. Mr. Volpi stated the objectors would object to any solution short of complete access. Mr. Irvine expressed concern with other people speaking for the objectors. Mr. Schiller stated Mr. Volpi had called and informed the objectors of the last meeting as a courtesy, but again pointed out this meeting was not a public notice meeting.

Mr. Partington pointed out there was very little evidence the alleyway had been used. The alleyway to the north, which was more heavily used, had been closed as a public right-of-way without any kind of a turnaround area. Mr. Partington stated the Committee would not have to look far for a precedent to closing an alley. Mr. Partington noted the Committee had previously approved closing alleyways mid-block. Mr. Partington felt the Committee was being asked to make a reasonable accommodation to one of the property owners, and felt fifteen feet to the west (instead of the proposed four feet) would be reasonable.

Mr. Terrell suggested the alleyway was strictly for the benefit of the property owners and had no public purpose. Mr. Terrell felt a compromise would be to craft a turnaround, and suggested the Committee vote on the issue. Mr. Irvine and Mr. Darmanin felt the approval should come from the City Engineer. Mr. Schiller agreed to personally send a letter to the objectors providing notice of the public Planning and Zoning meeting. Mr. Irvine noted since the Committee was aware of the objectors, the Committee had a responsibility to take their feelings into account.

Mr. Partington felt providing a solution to the issue would not be creating more of a problem, but would, in fact, "improve the status quo" as the issue has existed for many years.

In response to a question by Mr. Fajardo, Mr. Schiller explained the applicant had owned the property since about 1974, and the gates had been across the property for so long the applicant didn't even have a key. The gates have never been open along the alleyway for approximately thirty years, until the objectors filed a code enforcement complaint. Mr. Fajardo stated from a planning perspective he would be unable to support an alley vacation. Mr. Fajardo stated removal of the gates would allow access, and the Committee could not assume the alley would not be used if the gates were open.

Mr. Schiller noted the area was industrial, with the applicant owning both sides of the alleyway, up to Southwest 32<sup>nd</sup> Court on the west side of the property. There were two property owners on the east side, one of which is the objector, the other, Electronics Unlimited, was a corner property and do not have a need for the alleyway to be open. The turnaround would give the objector the ability to access their property. Mr. Fajardo stated the need of the property owners was not the only issue, that having the alleyway open added to the traffic grid. Mr. Irvine noted the rail line prevented all circulation east and west. Mr. Fajardo noted there was a rezoning process in the works to redesign guidelines, and the Planning Department would want to see alleyways maintained.

Mr. Darmanin expressed concern with rewarding the illegal behavior which happened to cause the pattern in the alley to develop by allowing this alleyway vacation to happen.

**Motion** made by Mr. Darmanin, seconded by Mr. Irvine, to approve the vacation of the alley, conditioned upon the City Engineer working with all affected to develop a turnaround in said alley.

Mr. Terrell reminded Mr. Schiller notice of subsequent hearings was to be provided to the objector, to which Mr. Schiller agreed. Mr. Partington stated the objectors would probably not approve, no matter what accommodations were made.

In a show of hands vote, the motion was approved, with Mr. Fajardo opposing.

**ITEM SEVEN:**                    **VACATION OF ALLEY**

ADDRESS OR GENERAL LOCATION: Alley in the 400 - 500 block of NE 3 and 4 Avenue

Item pulled from agenda.

**ITEM EIGHT:**                    **WALK-ON ITEM - DISCUSSION ABOUT PREVIOUSLY  
APPROVED PROW MINUTES**

ADDRESS OR GENERAL LOCATION: N/A

Mr. Volpi explained the item by stating as requested by the City Clerks Office, January 2004 – March 2008 Property and Right-of-Way minutes, previously approved by the Board have been edited by adding property address or general location (only). The City Clerks Office indicated that they would notify the City Commission that this has been done. We have also been asked by the City Clerks Office to repost the revised minutes for 2004 – 2008 to the City Website. This item is open for discussion.

Mr. Volpi explained the address and legal descriptions were not always the same, and stated there would be a concerted effort to provide a location for the minutes in the future.

Mr. Partington asked about the minutes being reposted to the website, and how far back the minutes were available. Mr. Volpi stated the minutes went back to 2004 on the website, and those minutes had been corrected. The minutes have not been posted, pending notification of the Committee. Mr. Darmanin asked if there would be a motion to approve the amended minutes. Mr. Volpi stated no motion was necessary with notification to the City Commission. Mr. Irvine felt the issue should be looked at by the attorneys as no Council was present in the meeting. Mr. Volpi stated the request had been sent to the attorneys, but no response had been received yet.

Mr. Irvine felt the issue may require a motion to re-approve the minutes. Mr. Volpi stated a motion was needed to change the minutes, but was waiting to hear from the City Attorney's office regarding a supplement to the minutes.

**Motion** made by Mr. Darmanin, seconded by Mr. Irvine, to allow supplementation of previous agendas with addresses pending the City Attorney's approval.

Ms. Ingold noted the minutes would also need to be changed.

**Motion** amended by Mr. Darmanin, seconded by Mr. Irvine, to allow supplementation of previous minutes and agendas with addresses pending the City Attorney's approval. In a voice vote, the motion passed unanimously.

There being no further business to come before the Committee the meeting adjourned at 11:38 a.m.